IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7554 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUSTAN TAHERBHAI

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 7554 of 2004

MR MK VAKHARIA for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 02/07/2004

ORAL JUDGEMENT

Leave to amend.

2. Rule. Mr.P.J.Mehta appears on advance copy and waives service of notice of rule on behalf of the

respondent. At the joint request of the learned advocates for the parties, the petition is taken up for final disposal today.

3. The short facts leading to the present petition are that the petitioner was served with a statutory notice under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act ('the said Act' for short) by the respondent. It is the case of the petitioner that the petitioner had participated in the proceedings, however on the last date of hearing, viz. 28th January 2004, the advocate of the petitioner had met with an accident and that therefore, the petitioner was not represented on that day. It is the case of the petitioner that therefore, by order dated 29.1.2004, the respondent quantified certain demands exercising powers under section 7-A of the said Act. The petitioner sought review of this order which also came to be rejected by the order dated 17/19.5.2004. The petitioner has challenged these orders before this Court in the present petition.

4. Learned advocate for the petitioner submits that non-appearance of the petitioner or his representative on 28.1.2004 was not intentional and that on account of the accident, the learned advocate for the petitioner could not remain present before the authorities on the date on which the hearing was fixed. He, therefore, submits that the impugned orders be set aside and the petitioner be given an opportunity to represent the case before the authority. Learned advocate Mr.P.J.Mehta supports the impugned orders and submits that the petition be dismissed. Having considered the submissions of the learned advocates for the parties, I am of the view that the petitioner should be afforded an opportunity to represent its case before the authorities. However, the same cannot be done unconditionally and the petitioner shall have to be put to certain terms.

5. The impugned orders dated 29.1.2004 as at Annexure B and 17/19.5.04 as at Annexure A are quashed and set aside. The respondent is directed to give a fresh hearing to the petitioner and dispose of the proceedings after hearing the petitioner. This is conditional upon the petitioner paying cost of Rs.5,000/- (Rupees five thousand) to the respondent was well as depositing 25 per cent of the amount demanded, which of course will be subject to final adjustment upon fresh orders being passed. The above amounts be deposited within a period of two weeks from today.

6. In view of the fact that the impugned orders are quashed, notice dated 14th June 2004 loses its significance. Subject to the above directions, the petition stands disposed of. Rule is made absolute to the above extent.

Direct service today.

(Akil Kureshi, J.)

(vjn)